

JAN - 4 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)
Imposition of Forfeiture Against)
Capitol Radiotelephone Inc.)
d.b.a. Capitol Paging)
Former Licensee of Station WNSX-646)
in the Private Land Mobile Radio)
Services)
and)
Revocation of License of)
Capitol Radio Telephone Inc.)
d.b.a. Capitol Paging)
Licensee of Station WNDA-400 in the)
Private Land Mobile Radio Services)
and)
Revocation of License of)
Capitol Radio Telephone Inc.)
d.b.a. Capitol Paging)
Licensee of Station WNWW-636 in the)
Private Land Mobile Radio Services)
and)
Revocation of License of)
Capitol Radiotelephone Company, Inc.)
Licensee of Station KWU-373 in the)
Public Mobile Radio Service)
and)
Revocation of License of)
Capitol Radiotelephone Company, Inc.)
Licensee of Station KUS-223 in the)
Public Mobile Radio Service)

PR Docket No. 93-231

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and)
Revocation of License of)
Capitol Radiotelephone Co., Inc.)
Licensee of Station KQD-614 in the)
Public Mobile Radio Service)
and)
Revocation of License of)
Capitol Radiotelephone Company, Inc.)
Licensee of Station KWU-204 in the)
Public Mobile Radio Service)

To: Administrative Law Judge
Joseph Chachkin

PRIVATE RADIO BUREAU'S OPPOSITION
TO MOTION TO DELETE FOOTNOTE

1. On December 30, 1993, Capitol Radiotelephone Company, Inc. ("Capitol") filed a motion to delete footnote no. 2 in Memorandum Opinion and Order, FCC 93M-750, released December 14, 1993. The Private Radio Bureau opposes the motion for the reasons which follow.

2. The Motion is unauthorized. There is no provision in the Commission's Rules permitting a motion to delete a footnote. Clearly, it is not the purely mechanical deletion of a footnote which Capitol is seeking. Capitol is seeking a reversal of the ruling implicit in the footnote. Thus, Capitol is asking for

reconsideration of an interlocutory ruling, and such a request will not be entertained. Section 1.106(a)(1) of the Commission's Rules. Accordingly, the Motion should be dismissed.

3. The Motion is without merit in any case. The footnote at issue reads:

As also pointed out by the Bureau, responses to RAM [Technologies, Inc.]'s Admissions, which do not constitute discovery, are overdue and the facts therein are deemed admitted. See Section 1.246(b) of the Rules.

In seeking deletion of the footnote, Capitol argues that it is dictum and that it is based on "an erroneous representation by the Private Radio Bureau." We disagree with both statements.

3. The footnote constitutes notice that the Presiding Judge intends to consider the facts in the request for admissions filed by RAM Technologies, Inc. ("RAM") admitted. If Capitol truly believes that the footnote is dictum there would be no need for its "deletion," since it would be without effect.

4. Furthermore, the footnote is not based on an erroneous representation. Capitol argues that its response to RAM's request for admissions was not overdue because, pursuant to a private agreement, RAM agreed to indefinitely suspend the deadline for such a response. Capitol goes on to claim that such a suspension of procedural deadlines by the parties was authorized by the Presiding Judge. While the Presiding Judge

encouraged the parties to stipulate as to a schedule for responding to such a request, in our view the indefinite suspension of a deadline was not contemplated. Such an indefinite suspension is nothing more than permission to fail to respond entirely, and such permission can only be given by the Presiding Judge. The permission of the Presiding Judge, while it could have been sought, was never requested.

5. In sum, we reiterate our view that Capitol's response to RAM's request for admissions was and is overdue. Under such circumstances, the Commission's Rules unequivocally state that the facts in question are deemed admitted. Section 1.246(b).

Respectfully submitted,
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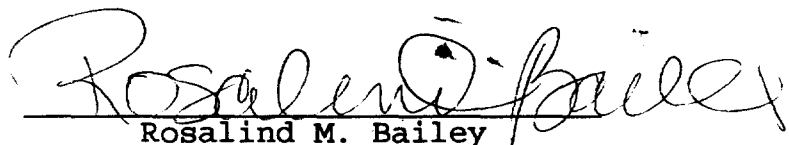
CERTIFICATE OF SERVICE

I, Rosalind M. Bailey, a secretary with the Private Radio Bureau, hereby certify that on this 4th day of January, 1994, copies of the foregoing **Private Radio Bureau's Opposition to Motion to Delete Footnote** was served, by first-class U.S. mail, upon the following:

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